



Amendment No. 5
to
Contract No. PA170000026
for
Chapter 380 3RD Party Review Services
between
RSM US, LLP
and the
City of Austin

- 1.0 The City hereby exercises an Administrative Increase to the above-referenced Contract in the amount of \$20,000.00, and to take effect on March 7, 2019.
- 2.0 The City hereby exercises this extension option for the subject contract. This extension option will be March 7, 2019 through March 6, 2020. Two options will remain.
- 3.0 The total contract amount is increased by \$70,000.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 03/07/2017 – 03/06/2018	\$70,000.00	\$70,000.00
Amendment No. 1: Change of Scope of Work 09/20/2017	\$0.00	\$70,000.00
Amendment No. 2: Correction Note: Contract amount revised to reflect RCA 02/02/2017, #35. 09/26/2017	\$0.00	\$70,000.00
Amendment No. 3: Option 2 – Extension 03/07/2018 – 03/06/2019	\$70,000.00	\$140,000.00
Amendment No. 4: Administrative Increase 10/02/2018	\$16,800.00	\$156,800.00
Amendment No. 5: Option 3 – Extension 03/07/2019 – 03/06/2020 Administrative Increase of \$20,000.00 03/07/2019	\$70,000.00 <u>\$20,000.00</u> \$90,000.00	\$246,800.00

- 4.0 MBE/WBE goals do not apply to this contract.
- 5.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 6.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date:

Mike O'Brien 2/5/19

Printed Name:

Mike O'Brien
Authorized Representative

Sign/Date:

James Scarboro 2/6/19

James Scarboro
Purchasing Officer

City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701

RSM US, LLP
811 Barton Springs Road, 5th Floor
Austin, Texas 78704
(512) 476-0717
mike.obrien@rsmus.com

**INTERLOCAL COOPERATION AGREEMENT
FOR INDEPENDENT THIRD PARTY REVIEW OF COMPLIANCE WITH
ECONOMIC DEVELOPMENT INCENTIVE AGREEMENTS**

This Interlocal Agreement ("Agreement") is entered into by and between Travis County, a political subdivision of the State of Texas ("County"), and the City of Austin, a home-rule municipal corporation and political subdivision of the State of Texas ("City").

RECITALS

1. County and City have the authority to enter into an Interlocal Cooperation Agreement through Tex. Const. Art. 3, sec. 64 and Chapter 791, TEX. GOVT. CODE ANN.
2. County has the authority to provide for economic development through various programs and agreements for the County under Chapter 381, TEX. LOC. GOVT. CODE and other statutes.
3. County desires to obtain independent, third party review of economic development projects having a Chapter 380 agreement with the City and a concurrent Chapter 381 agreement with the County prior to authorizing payments under these agreements.
4. County desires to procure services, and City is able to provide, services related to fiscal information in Travis County regarding economic development agreements.
5. County through its Commissioners Court finds that the services provided under this Agreement address a significant public concern that Companies seeking a reduction in property taxes fulfill the promises made in their Chapter 381 agreements with County so that the population which the County serves obtains the intended economic development.

In consideration of the agreements, covenants and payments in this Agreement, the sufficiency of which are acknowledged, City and County mutually agree to the terms and conditions in this Agreement.

AGREEMENT

1. **DEFINITIONS.** In this Agreement,
 - 1.1. "Agreement Term" means the Initial Term plus any subsequent Renewal Term(s) or any other period of time designated in writing as an Agreement Term by the Parties.
 - 1.2. "City Council" means City Council of the City of Austin, Texas.
 - 1.3. "City Manager" means the City Manager of the City of Austin, Texas.
 - 1.4. "Claim" means any claim, or other action or proceeding that is related to the services provided under this Agreement, including proceedings before an administrative agency.
 - 1.5. "Commissioners Court" means the Travis County Commissioners Court.

- 1.6. "Common Requirements" means the same requirements that are included in a Joint Project's Chapter 380 agreement as well as in the Joint Project's Chapter 381 agreement.
- 1.7. "Company" means the beneficiary party to Joint Project agreements with both City and County.
- 1.8. "County Auditor" means the Travis County Auditor, or her designee.
- 1.9. "County Purchasing Agent" or "Purchasing Agent" means the Travis County Purchasing Agent, or her designee.
- 1.10. "Days" means calendar day(s) unless otherwise specifically noted in any provision.
- 1.11. "Fiscal Year" means the County fiscal year, which, at the time of execution of this Agreement begins October 1 and ends on the following September 30.
- 1.12. "Joint Project" means a project having both a Chapter 380 agreement with the City and a concurrent Chapter 381 agreement with the County for which County has requested review.
- 1.13. "Party" and/or "Parties" means the County and/or City.
- 1.14. "Person" means any natural person, firm, corporation, or other entity.
- 1.15. "Third Party Reviewer" means the independent contractor retained by the City in its sole discretion to evaluate compliance with the City's Chapter 380 economic development agreements.
- 1.16. "Working Day" means any day except a Saturday or Sunday and which neither Party has declared as a holiday for its employees.

2. SCOPE OF AGREEMENT

- 2.1. **Purpose.** The purpose of this Agreement is for the parties to collaborate between the City and County to more efficiently monitor Joint Projects by conducting one comprehensive annual review for each Joint Project.
- 2.2. Each Joint Project is assumed to be subject to some Common Requirements that are in the Chapter 380 and Chapter 381 agreements, as well as some requirements that are unique to the Chapter 380 agreement, and other requirements that are unique to the Chapter 381 agreement.
- 2.3. **Work Flow:**
 - a. Company subject to Joint Project agreements provides annual compliance reports to City and County;
 - b. City and County review reports and plan for auditing Company's performance;

- c. City drafts procedures for monitoring the Common Requirements and the requirements that are unique to the Chapter 380 agreement;
- d. City sends draft procedures to County within 30 days of receiving Company's annual compliance report;
- e. County identifies additional procedures needed to monitor the requirements that are unique to the Chapter 381 agreement;
- f. County sends draft procedures to City within 15 days of receiving City's draft procedures;
- g. City and County finalize procedures;
- h. City schedules review meeting to include City, County, Company representatives, and Third Party Reviewer;
- i. At least one week prior to that meeting date, City sends meeting agenda detailing all procedures to be performed to County, Company and Third Party Reviewer;
- j. Following meeting, City, in collaboration with County, works with Third Party Reviewer to finalize the procedures that the Third Party Reviewer will perform to verify the City's and County's findings;
- k. Third Party Reviewer performs procedures and issues report to City;
- l. City forwards completed report to County.

2.4. Entire Agreement.

- a. **Inclusive Agreement.** All oral and written agreements between the Parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Agreement, including the applicable terms of the Agreement, are contained in this Agreement.
- b. **Exhibits.** Exhibit "A", Request for Payment is part of this Agreement and constitutes promised performance by the Parties under this Agreement.

2.5. Forms- W-9 Taxpayer Identification Form. City shall provide County with an Internal Revenue Service Form W-9 Request for Taxpayer Identification Number and Certification that is completed in compliance with the Internal Revenue Code and its rules and regulations, and a statement of entity status in a form satisfactory to County, with notice of any changes to these forms throughout the term of this Agreement. City acknowledges that this W -9 form must be provided to the County Purchasing Agent before any Agreement Funds are payable.

2.6. Third Party Reviewer.

- a. **City Responsibility.** City is wholly responsible to County for the performance of the Third Party Reviewer under this Agreement, whether that performance

is provided directly by City or indirectly by the Third Party Reviewer. City shall monitor both financial and programmatic performance and maintain pertinent records concerning the Third Party Reviewer. These records shall be available for inspection by County. City shall ensure that its Third Party Reviewer complies with all applicable terms of this Agreement (including terms related to records and reports) as if the performance rendered by the Third Party Reviewer were being rendered by City. City shall inspect all of Third Party Reviewer's work and is responsible for ensuring that it is completed in a timely, good and workmanlike manner pursuant to the terms of this Agreement, but the City does not guarantee or warrant the services of the Third Party Reviewer. County inquiries related to the Third Party Reviewer Agreement services shall be directed to the City, and City will cooperate with all such inquiries.

- b. **Copies.** Upon written request by County, City shall provide County with copies of any contract for a Third Party Reviewer under which Agreement review services are provided.
- c. **Contents of Contracts.** Contracts with Third Party Reviewers shall include provisions ensuring that:
 - 1. Third Party Reviewers will receive no duplicate payments from other sources or under other contracts for services provided under this Agreement;
 - 2. The Third Party Reviewer will communicate directly and promptly with the City regarding any County inquiries forwarded by the City;
 - 3. Third Party Reviewers comply with all laws and terms of this Agreement; and
 - 4. City is solely responsible for payment of Third Party Reviewer.
- d. **Limitations.** This Agreement sets out the agreements and obligations between County and City only, and does not obligate County in any way to any of City's Third Party Reviewers, or any other third party. This Agreement creates no third party beneficiary rights as between County and any of City's Third Party Reviewers.

3. TERM

- 3.1. **Initial Term.** This Agreement commences on March 1, 2017, and terminates on February 28, 2018 (Initial Term), unless terminated earlier in accordance with its terms.
- a. **Renewal Term(s).** If the County has notified the City that the Commissioners Court has approved funding for the Renewal Term, this Agreement automatically renews on March 1, 2018, for an additional one-year term (or any time period designated in writing by the Parties before the renewal), and each successive year on March 1 for an additional one-year term (Renewal

Term(s)) until either Party provides written notice of nonrenewal, or unless the Agreement is terminated as set forth in section 7 below.

- 3.2. The terms and conditions of the Agreement in any Renewal Term remain the same as those in the previous term unless amended in writing pursuant to the terms of this Agreement.

4. **AGREEMENT FUNDS. ADMINISTRATION AND SUPPORT**

- 4.1. **Payments to City.** County shall pay City quarterly during the Initial Term and any Renewal Term, unless this Agreement is amended. County agrees to reimburse City for 50% of the actual amount billed by the Third Party Reviewer for each Joint Project. The total amount due for the Initial Term shall not exceed \$16,000.00. Funding amounts for each Renewal Term will increase as needed, subject to approval of funding by both Parties, so that Travis County pays for 50% of the actual amount billed by the Third Party Reviewer for each Joint Project.

- 4.2. After each calendar year quarter, City shall submit to County a Request for Payment using the form attached as Exhibit "A" accompanied by copies of each invoice from the Third Party Reviewer for which payment is sought. County shall pay City within 30 days of receipt of the complete and correct Request for Payment.

4.3. **Administration.**

- a. **City Administration.** City designates the Economic Development Department as the department responsible for the City's administration of this Agreement and all matters pertaining to it. City contact for this Agreement is:

Terry Franz, Contract Administrator (or successor)
Economic Development Department
P. O. Box 1088
Austin, Texas 78767
(512) 974-7871
Email: Terry.Franz@austintexas.gov

- b. **County Administration.** County designates the Travis County Planning and Budget Office as the department responsible for County's administration of this Agreement. County contact for this agreement is:

Diana Ramirez, Director, Economic Development & Strategic Investments (or successor)
Planning and Budget Office
P. O. Box 1748
Austin, Texas 78767
(512) 854-9106
Email: Diana.Ramirez@traviscountytexas.gov

- 4.4. **Authorized Representatives.** City and County agree that, unless otherwise designated specifically in any provision, all communication, requests, questions

or other inquiries related to this Agreement shall initially be presented by the contact in Section 3.4.

- 4.5. **Insurance.** City and County acknowledge that each Party has self-funded insurance and will maintain risk related reserves at a level sufficient to cover the liability assumed by City and County, respectively, pursuant to applicable generally accepted business standards. City shall require all Third Party Reviewers providing services under this Agreement to have standard insurance coverage as stated in its solicitation documents, or actual existing agreements.
- 4.6. **Current Revenue Funds.** County shall provide payment for services under this Agreement from current revenue funds available and set aside for this purpose. City shall pay and provide payment for services rendered by the Third Party Reviewer from current revenue funds available; however, this Agreement is automatically terminated if the City Council does not appropriate funds to pay and retain the Third Party Reviewer, or if the County Commissioners Court does not appropriate funds to pay the City for services under this Agreement. Either party shall provide the other party written notice within ten days if this occurs. City is providing services under this Agreement necessary for the performance of City and County governmental functions. The payment is in an amount that fairly compensates City for the services or functions performed under this Agreement.
- 4.7. **Prior Debts.** Neither Party is liable for costs incurred or performances rendered by the other Party before or after the end of the Agreement Term.

5. **AUDIT**

- 5.1. **County Audit.** Except as otherwise provided, County has the right to conduct a financial and compliance audit of the performance of this Agreement on an annual basis. City shall permit County or its authorized representative, to audit the public records that relate to this Agreement. City shall make any public documents, materials, or information necessary to facilitate this audit available for inspection, audit and/or reproduction. City shall permit County or its authorized representative to obtain, inspect, audit and/or reproduce any public documents, materials, or information necessary to facilitate this audit.

6. **INDEPENDENT ENTITY AND ACKNOWLEDGEMENT OF RESPONSIBILITIES**

- 6.1. **Independent Entities.** The Parties expressly acknowledge that City and County are independent entities and each assumes all the rights, obligations, and liabilities applicable to it as an independent entity. No employee of the City may be considered an employee, agent, or representative of the County or gain any rights against the County pursuant to the County's personnel policies. No employee of the County may be considered an employee, agent, or representative of the City or gain any rights against the City pursuant to the City's personnel policies. The relationship of County and City under this Agreement is not and shall not be interpreted to be a partnership, joint enterprise or joint venture. Neither Party has the authority to:
 - a. make any statements, representations or commitments of any kind on behalf of the other Party, or

- b. take any action which would be binding on the other Party, or
- c. hold itself out to be able to bind the other Party.

6.2. Responsibilities. City is not liable for any claims, damages or attorney fees arising from any negligence or unlawful acts of the County or its employees in relation to this Agreement. County is not liable for any claims, damages or attorney fees arising from any negligence or unlawful acts of City or its employees in relation to this Agreement. City and County acknowledge that each entity is otherwise responsible for any claims or losses from personal injury or death or property damages that were caused by the acts or omissions of that entity, its agents, employees, or representatives in the performance of the services and activities under this Agreement; and that each entity is responsible for the handling of the portion of any claim which is based solely on the assertion that a policy of that entity is illegal or unenforceable in any way. Neither the City nor the Third Party Reviewer is liable for the release of any information provided by the County or any Company to review compliance with the County's Chapter 381 Agreement with any Company.

6.3. Claims Notification. If any Claim is made or brought by any Person against City or County, the Party against whom the Claim is made shall give written notice to the other Party of the Claim within three Working Days after being notified of it or the threat of it. This notice shall include the name and address of the Person that made or threatened to make or institute a Claim; the basis of the Claim; the court or administrative tribunal, if any, where the Claim was instituted; and the name or names of any Person against whom this Claim is being made or threatened. This written notice shall be given in the manner provided in Section 11.0 of this Agreement. Except as otherwise directed, the Party against whom the Claim has been made shall furnish the other Party with copies of all pertinent papers received by that Party with respect to these Claims.

7. TERMINATION

7.1. Termination for Cause. Unless otherwise specified in this Agreement, either Party has the right to terminate this Agreement, in whole or in part, at any time for the following reasons:

- a. During the budget planning and adoption process, their governing body fails to provide funding for the Agreement or its Third Party Reviewers during the next Agreement Term;
- b. The other Party has failed to comply with any term or condition of this Agreement.
- c. The other Party is unable to conform to changes required by federal, state or local laws or regulations.

7.2. Mutual Termination. Both Parties have the right to terminate this Agreement, in whole or in part, when both Parties agree that the continuation of the activities funded under this Agreement would not produce beneficial results commensurate with the further expenditure of funds; provided that both Parties agree, in writing,

upon the termination conditions, including the effective date of the termination and, in the case of partial termination, the portion of the Agreement to be terminated.

- 7.3. Termination.** The Agreement may be terminated by either Party at any time, for any reason, by giving 30 days' written notice to the other Party of its intention to terminate.
- 7.4. Termination Procedure.** At least 30 days prior to the effective date of termination, the Party seeking termination shall notify the other Party in writing of the reasons for termination, the effective date of termination, and, in the case of a partial termination, the portion of the Agreement to be terminated. The other Party may avoid termination if that Party corrects the cause(s) for termination to the satisfaction of the terminating Party prior to the effective date of termination. This notice includes the decision by either Party not to fund this Agreement.
- 7.5. Rights Surviving Termination.** If either Party terminates this Agreement in whole or in part, City has the right to receive payment for all services provided before the date of termination and not previously paid. Neither Party is responsible to the other Party for expenses or costs incurred after the effective date of the termination of this Agreement.
- 7.6.** Nothing in this section 7 prevents or prohibits either Party from seeking any other remedy allowed by law.

8. MISCELLANEOUS PROVISIONS

- 8.1. Compliance with Applicable Law.** City and County shall each provide, or the City shall contract to provide, all services and activities under this Agreement in compliance with the Constitutions of the United States and Texas and with all applicable federal, state and local orders, ordinances, laws, regulations, rules, policies and certifications governing any activities undertaken during the performance of this Agreement.
- 8.2. Non-Waiver.** No payment, act or omission by either Party constitutes a waiver of any breach or default of the other Party which then exists or may subsequently exist. The failure of either Party to exercise any right or privilege granted in this Agreement shall not be construed as a waiver of that right or privilege.
- 8.3. Reservation of Rights and Remedies.** All rights of the Parties under this Agreement are specifically reserved and any payment, act or omission shall not impair or prejudice any remedy or right to either Party under it. Exercise of any right or remedy in this Agreement shall not preclude the exercise of any other right or remedy under this Agreement or under any law, and any action taken in the exercise of any right or remedy shall not be deemed a waiver of any other rights or remedies.
- 8.4. Law and Venue.** This Agreement is governed by the laws of the State of Texas and all obligations under this Agreement shall be performable in Travis County, Texas. Venue for any dispute arising out of this Agreement will lie in the appropriate courts of Travis County, Texas.

8.5. Severability. If any portion of this Agreement is ruled invalid by a court of competent jurisdiction, the remainder of it shall remain valid and binding, and shall continue to have full force and effect and shall not be impaired or invalidated in any way by that holding.

8.6. Interpretational Guidelines

- a. **Computation of Time.** When any period of time is stated in this Agreement, the time shall be computed to exclude the first day and include the last day of the period, provided the last day of the period is a Working Day. If the last day of any period falls on a day that is not a Working Day, these days shall be omitted from the computation.
- b. **Number and Gender.** Words of any gender in this Agreement shall be construed to include any other gender and words in either number shall be construed to include the other unless the context in the Agreement clearly requires otherwise.
- c. **Headings.** The headings at the beginning of the various provisions of this Agreement have been included only to make it easier to locate the subject matter covered by that section or subsection and are not to be used in construing this Agreement.

8.7. Immunity or Defense. Both parties expressly acknowledge that the execution of this Agreement and any conduct of any representative of City or County relating to this Agreement shall not waive, or be deemed to waive, any immunity or defense otherwise available to that Party against claims arising in the exercise of its governmental powers and functions, and shall not be considered a waiver of sovereign immunity to suit. Both Parties acknowledge that a decision by one Party to waive immunity or to compensate a claim for which immunity would have been a defense and would have operated to prevent payment does not operate as a waiver or decision to compensate by the other Party and such action by one Party shall not operate to incur any expense or charge to the other Party.

8.8. Survival of Conditions. The conditions and requirements of this Agreement which, by their terms, are performable after termination or expiration shall remain fully performable.

9. AMENDMENTS

9.1. Written Amendments. Any change to the terms of this Agreement or any attachments to it must be made in writing and signed by both Parties.

9.2. Acknowledgements as to Amendment. The Parties acknowledge that no officer, agent, employee or representative of theirs has any authority to change the terms of this Agreement unless expressly granted that specific authority by the governing entity of that Party under a specific provision of this Agreement or by separate action of that governing entity.

9.3. Submission of Amendment. Each Party shall submit all requests for alterations, additions or deletions to this Agreement or any attachment to it to the contact

person in Section 4.3 for consideration. Each Party shall submit these requests for changes for written approval by the governing entity or authorized representative.

10. NOTICES

10.1. Any notice required or permitted to be given under this Agreement by one Party to the other shall be in writing and shall be deemed to have been given:

- a. immediately if delivered in person to the person named in this Section 10 for the Party to whom the notice is directed, or
- b. on the third day following mailing if placed in the United States Mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the Party at the address in this section 10.

10.2. County Address. The address of County for all purposes under this Agreement shall be:

Bonnie Floyd, Purchasing Agent (or her successor)
P. O. Box 1748
Austin, Texas 78767

With copies to (registered or certified mail with return receipt is not required):

Diana Ramirez, Director, Economic Development & Strategic Investments (or her successor)
Planning and Budget Office
P. O. Box 1748
Austin, Texas 78767

10.3. City Address. The address of the City for all purposes under this Agreement and for all notices hereunder shall be as follows:

Elaine Hart, Interim City Manager (or her successor in office)
City of Austin
P. O. Box 1088
Austin, Texas 78767

With copy to (registered or certified mail with return receipt requested is not required)

Terry Franz, Economic Development Department
City of Austin
P. O. Box 1088
Austin, Texas 78767

and

Anne Morgan, City Attorney (or her successor in office)
City of Austin
P. O. Box 1088
Austin, Texas 78767

- 10.4. Change of Address.** Each Party may change the address for notice to it by giving written notice of the change in compliance with this Section 10.

11. LEGAL AUTHORITY

- 11.1. Legal Authority to Enter Agreement.** Each Party represents that it has the legal authority to enter into this Agreement. City represents that it has the legal authority to receive funds authorized by this Agreement and to perform the services it has obligated itself to perform under this Agreement.

- 11.2. Signers.** The person or persons signing this Agreement on behalf of each Party, or representing themselves as signing this Agreement on behalf of either Party, represent that he or she has been duly authorized by that Party to sign this Agreement on behalf of the Party and to bind the Party validly and legally to all terms, performances, and provisions in this Agreement.

12. PROHIBITIONS

- 12.1. Conflict of Interest.** In performing duties under this Agreement, City employees shall comply with the conflict of interest requirements and ethics provisions set forth in the Austin City Code, Article 4 (a copy of which has been provided to County). Both Parties shall comply with the conflict of interest provisions in Chapter 171 of the Texas Local Government Code and other applicable laws.

12.2. Gratuities.

- a. Either Party may terminate this Agreement if gratuities of any kind, including entertainment and gifts, were offered or given by the other Party or their representative to any of its officials or employees to secure favorable treatment under this Agreement.
- b. If this Agreement is terminated pursuant to this subsection, in addition to other rights and remedies, the Party seeking termination is entitled to recover liquidated damages from the other Party equal to the cost incurred by the other Party in providing these gratuities. Neither Party's employees, officers and agents shall solicit nor accept gratuities, favors or anything of monetary value from Third Party Reviewers or potential Third Party Reviewers.

13. ASSIGNABILITY

- 13.1.** No Party may assign any of the rights or duties under this Agreement without the prior written approval of the other Party. City acknowledges that no officer, agency, employee or representative of County has any authority to grant an assignment unless expressly granted that specific authority by the Commissioners Court.

14. FORCE MAJEURE.

14.1. Neither Party shall be financially liable to the other Party for delays or failures to perform under the Agreement where these are caused by force majeure (i.e. those causes generally recognized under Texas law as constituting impossible conditions). These delays or failures to perform extend the period of performance for a period of time equal to that required to remove these exigencies. If a Party seeking to avail itself of this clause does not notify the other Party within five Working Days after the impossible conditions have abated, that Party waives this right as a defense, unless timely notification is impractical under the circumstances and then notification must be done as timely as possible. Each Party agrees that breach of this provision by failure to provide notice or provide services after the impossible conditions have passed, entitles non-breaching Party to reduce or stop payments or services or immediately terminate this Agreement.

15. DUPLICATE ORIGINALS

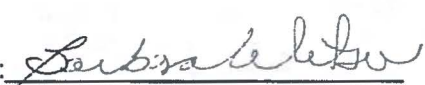
This Agreement is executed in duplicate originals.

TRAVIS COUNTY

By: 
Sarah Eckhardt, County Judge

Date: JUN 20 2017

APPROVALS:

Approved as to Form: 
Barbara Wilson, Assistant County Attorney

Date: June 19, 2017

Approved by: 
Bonnie Floyd, County Clerk

Date: 6-19-17

Funds Verified by: 
Nicki Riley, County Auditor

Date: 6/19/17

CITY OF AUSTIN

Nicki Riley, County Auditor

By: 
Elaine Hart, Interim City Manager

Date: 6/27/17

Approved as to Form: 
Leela Fireside, Assistant City Attorney

Date: 6/27/2017

**Exhibit A
Request for Payment**

Independent Third-Party Review Interlocal Agreement between City of Austin and Travis County

Date: _____ **County Contract Number:** _____

This Request for Payment is submitted in accordance with the terms and conditions of the Interlocal Agreement between the City of Austin (City) and Travis County (County) for Independent Third-Party Review. City certifies that it has paid in full each of the attached invoices.

Name of Third Party Reviewer: _____

<i>Invoice Number</i>	<i>Invoice Date</i>	<i>Month in which work was performed</i>	<i>Name of Joint Project</i>	<i>Total Amount billed</i>	<i>Amount due from County</i>

Certified by City of Austin Economic Development Department: _____
signature

Name: _____ **Title:** _____ **Date:** _____



Amendment No. 4
to
Contract No. PA170000026
for
Chapter 380 3rd Party Review Services
between
RSM US, LLP
and the
City of Austin

- 1.0 The City hereby exercises an Administrative Increase to the above-referenced Contract in the amount of \$16,8000.00, and to take effect on March 7, 2018.
- 2.0 Stated administrative increase shall pay portion (50%) agreed upon by Travis County in Interlocal Cooperative Agreement for Independent Third Party Review of Compliance with Economic Development Incentive Agreement (See Exhibit E). Section 4.1 of the Agreement states that the "County agrees to reimburse City for 50% of the actual amount billed by the Third Party Reviewer (RSM US, LP) for each Joint Project." Due to lack of funding, Travis County could not make payment for this term. Under Section 4.2, payment of Travis County's portion falls to the City. It states that the "City is solely responsible for payment of Third Party [RSM US, LP]".
- 3.0 The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 03/07/2017 – 03/06/2018	\$70,000.00	\$70,000.00
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- 6.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date:

Mike O'Brien 10/8/18

Printed Name:

Authorized Representative

RSM US, LP
811 Barton Springs Road, 5th Floor
Austin, Texas 78704
(512) 476-0717
mike.obrien@rsmus.com

Sign/Date:

10/17/18 *Cyrenthia Ellis*

Cyrenthia Ellis
Procurement Manager
City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701

Exhibit E

INTERLOCAL COOPERATION AGREEMENT FOR INDEPENDENT THIRD PARTY REVIEW OF COMPLIANCE WITH ECONOMIC DEVELOPMENT INCENTIVE AGREEMENTS

This Interlocal Agreement ("Agreement") is entered into by and between Travis County, a political subdivision of the State of Texas ("County"), and the City of Austin, a home-rule municipal corporation and political subdivision of the State of Texas ("City").

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1. County and City have the authority to enter into an Interlocal Cooperation Agreement through Tex. Const. Art. 3, sec. 64 and Chapter 791, TEX. GOVT. CODE ANN.
2. County has the authority to provide for economic development through various programs and agreements for the County under Chapter 381, TEX. LOC. GOVT. CODE and other statutes.
3. County desires to obtain independent, third party review of economic development projects having a Chapter 380 agreement with the City and a concurrent Chapter 381 agreement with the County prior to authorizing payments under these agreements.
4. County desires to procure services, and City is able to provide, services related to fiscal information in Travis County regarding economic development agreements.
5. County through its Commissioners Court finds that the services provided under this Agreement address a significant public concern that Companies seeking a reduction in property taxes fulfill the promises made in their Chapter 381 agreements with County so that the population which the County serves obtains the intended economic development.

In consideration of the agreements, covenants and payments in this Agreement, the sufficiency of which are acknowledged, City and County mutually agree to the terms and conditions in this Agreement.

AGREEMENT

1. **DEFINITIONS.** In this Agreement,
 - 1.1. "Agreement Term" means the Initial Term plus any subsequent Renewal Term(s) or any other period of time designated in writing as an Agreement Term by the Parties.
 - 1.2. "City Council" means City Council of the City of Austin, Texas.
 - 1.3. "City Manager" means the City Manager of the City of Austin, Texas.
 - 1.4. "Claim" means any claim, or other action or proceeding that is related to the services provided under this Agreement, including proceedings before an administrative agency.
 - 1.5. "Commissioners Court" means the Travis County Commissioners Court.

- 1.6. "Common Requirements" means the same requirements that are included in a Joint Project's Chapter 380 agreement as well as in the Joint Project's Chapter 381 agreement.
- 1.7. "Company" means the beneficiary party to Joint Project agreements with both City and County.
- 1.8. "County Auditor" means the Travis County Auditor, or her designee.
- 1.9. "County Purchasing Agent" or "Purchasing Agent" means the Travis County Purchasing Agent, or her designee.
- 1.10. "Days" means calendar day(s) unless otherwise specifically noted in any provision.
- 1.11. "Fiscal Year" means the County fiscal year, which, at the time of execution of this Agreement begins October 1 and ends on the following September 30.
- 1.12. "Joint Project" means a project having both a Chapter 380 agreement with the City and a concurrent Chapter 381 agreement with the County for which County has requested review.
- 1.13. "Party" and/or "Parties" means the County and/or City.
- 1.14. "Person" means any natural person, firm, corporation, or other entity.
- 1.15. "Third Party Reviewer" means the independent contractor retained by the City in its sole discretion to evaluate compliance with the City's Chapter 380 economic development agreements.
- 1.16. "Working Day" means any day except a Saturday or Sunday and which neither Party has declared as a holiday for its employees.

2. SCOPE OF AGREEMENT

- 2.1. **Purpose.** The purpose of this Agreement is for the parties to collaborate between the City and County to more efficiently monitor Joint Projects by conducting one comprehensive annual review for each Joint Project.
- 2.2. Each Joint Project is assumed to be subject to some Common Requirements that are in the Chapter 380 and Chapter 381 agreements, as well as some requirements that are unique to the Chapter 380 agreement, and other requirements that are unique to the Chapter 381 agreement.
- 2.3. **Work Flow:**
 - a. Company subject to Joint Project agreements provides annual compliance reports to City and County;
 - b. City and County review reports and plan for auditing Company's performance;

- c. City drafts procedures for monitoring the Common Requirements and the requirements that are unique to the Chapter 380 agreement;
- d. City sends draft procedures to County within 30 days of receiving Company's annual compliance report;
- e. County identifies additional procedures needed to monitor the requirements that are unique to the Chapter 381 agreement;
- f. County sends draft procedures to City within 15 days of receiving City's draft procedures;
- g. City and County finalize procedures;
- h. City schedules review meeting to include City, County, Company representatives, and Third Party Reviewer;
- i. At least one week prior to that meeting date, City sends meeting agenda detailing all procedures to be performed to County, Company and Third Party Reviewer;
- j. Following meeting, City, in collaboration with County, works with Third Party Reviewer to finalize the procedures that the Third Party Reviewer will perform to verify the City's and County's findings;
- k. Third Party Reviewer performs procedures and issues report to City;
- l. City forwards completed report to County.

2.4. Entire Agreement.

- a. **Inclusive Agreement.** All oral and written agreements between the Parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Agreement, including the applicable terms of the Agreement, are contained in this Agreement.
- b. **Exhibits.** Exhibit "A", Request for Payment is part of this Agreement and constitutes promised performance by the Parties under this Agreement.

2.5. Forms- W-9 Taxpayer Identification Form. City shall provide County with an Internal Revenue Service Form W-9 Request for Taxpayer Identification Number and Certification that is completed in compliance with the Internal Revenue Code and its rules and regulations, and a statement of entity status in a form satisfactory to County, with notice of any changes to these forms throughout the term of this Agreement. City acknowledges that this W -9 form must be provided to the County Purchasing Agent before any Agreement Funds are payable.

2.6. Third Party Reviewer.

- a. **City Responsibility.** City is wholly responsible to County for the performance of the Third Party Reviewer under this Agreement, whether that performance

is provided directly by City or indirectly by the Third Party Reviewer. City shall monitor both financial and programmatic performance and maintain pertinent records concerning the Third Party Reviewer. These records shall be available for inspection by County. City shall ensure that its Third Party Reviewer complies with all applicable terms of this Agreement (including terms related to records and reports) as if the performance rendered by the Third Party Reviewer were being rendered by City. City shall inspect all of Third Party Reviewer's work and is responsible for ensuring that it is completed in a timely, good and workmanlike manner pursuant to the terms of this Agreement, but the City does not guarantee or warrant the services of the Third Party Reviewer. County inquiries related to the Third Party Reviewer Agreement services shall be directed to the City, and City will cooperate with all such inquiries.

- b. **Copies.** Upon written request by County, City shall provide County with copies of any contract for a Third Party Reviewer under which Agreement review services are provided.
- c. **Contents of Contracts.** Contracts with Third Party Reviewers shall include provisions ensuring that:
 - 1. Third Party Reviewers will receive no duplicate payments from other sources or under other contracts for services provided under this Agreement;
 - 2. The Third Party Reviewer will communicate directly and promptly with the City regarding any County inquiries forwarded by the City;
 - 3. Third Party Reviewers comply with all laws and terms of this Agreement; and
 - 4. City is solely responsible for payment of Third Party Reviewer.
- d. **Limitations.** This Agreement sets out the agreements and obligations between County and City only, and does not obligate County in any way to any of City's Third Party Reviewers, or any other third party. This Agreement creates no third party beneficiary rights as between County and any of City's Third Party Reviewers.

3. TERM

3.1. **Initial Term.** This Agreement commences on March 1, 2017, and terminates on February 28, 2018 (Initial Term), unless terminated earlier in accordance with its terms.

- a. **Renewal Term(s).** If the County has notified the City that the Commissioners Court has approved funding for the Renewal Term, this Agreement automatically renews on March 1, 2018, for an additional one-year term (or any time period designated in writing by the Parties before the renewal), and each successive year on March 1 for an additional one-year term (Renewal

Term(s)) until either Party provides written notice of nonrenewal, or unless the Agreement is terminated as set forth in section 7 below.

- 3.2. The terms and conditions of the Agreement in any Renewal Term remain the same as those in the previous term unless amended in writing pursuant to the terms of this Agreement.

4. AGREEMENT FUNDS. ADMINISTRATION AND SUPPORT

- 4.1. **Payments to City.** County shall pay City quarterly during the Initial Term and any Renewal Term, unless this Agreement is amended. County agrees to reimburse City for 50% of the actual amount billed by the Third Party Reviewer for each Joint Project. The total amount due for the Initial Term shall not exceed \$16,000.00. Funding amounts for each Renewal Term will increase as needed, subject to approval of funding by both Parties, so that Travis County pays for 50% of the actual amount billed by the Third Party Reviewer for each Joint Project.

- 4.2. After each calendar year quarter, City shall submit to County a Request for Payment using the form attached as Exhibit "A" accompanied by copies of each invoice from the Third Party Reviewer for which payment is sought. County shall pay City within 30 days of receipt of the complete and correct Request for Payment.

4.3. **Administration.**

- a. **City Administration.** City designates the Economic Development Department as the department responsible for the City's administration of this Agreement and all matters pertaining to it. City contact for this Agreement is:

Terry Franz, Contract Administrator (or successor)
Economic Development Department
P. O. Box 1088
Austin, Texas 78767
(512) 974-7871
Email: Terry.Franz@austintexas.gov

- b. **County Administration.** County designates the Travis County Planning and Budget Office as the department responsible for County's administration of this Agreement. County contact for this agreement is:

Diana Ramirez, Director, Economic Development & Strategic Investments (or successor)
Planning and Budget Office
P. O. Box 1748
Austin, Texas 78767
(512) 854-9106
Email: Diana.Ramirez@traviscountytexas.gov

- 4.4. **Authorized Representatives.** City and County agree that, unless otherwise designated specifically in any provision, all communication, requests, questions

or other inquiries related to this Agreement shall initially be presented by the contact in Section 3.4.

- 4.5. **Insurance.** City and County acknowledge that each Party has self-funded insurance and will maintain risk related reserves at a level sufficient to cover the liability assumed by City and County, respectively, pursuant to applicable generally accepted business standards. City shall require all Third Party Reviewers providing services under this Agreement to have standard insurance coverage as stated in its solicitation documents, or actual existing agreements.
- 4.6. **Current Revenue Funds.** County shall provide payment for services under this Agreement from current revenue funds available and set aside for this purpose. City shall pay and provide payment for services rendered by the Third Party Reviewer from current revenue funds available; however, this Agreement is automatically terminated if the City Council does not appropriate funds to pay and retain the Third Party Reviewer, or if the County Commissioners Court does not appropriate funds to pay the City for services under this Agreement. Either party shall provide the other party written notice within ten days if this occurs. City is providing services under this Agreement necessary for the performance of City and County governmental functions. The payment is in an amount that fairly compensates City for the services or functions performed under this Agreement.
- 4.7. **Prior Debts.** Neither Party is liable for costs incurred or performances rendered by the other Party before or after the end of the Agreement Term.

5. **AUDIT**

- 5.1. **County Audit.** Except as otherwise provided, County has the right to conduct a financial and compliance audit of the performance of this Agreement on an annual basis. City shall permit County or its authorized representative, to audit the public records that relate to this Agreement. City shall make any public documents, materials, or information necessary to facilitate this audit available for inspection, audit and/or reproduction. City shall permit County or its authorized representative to obtain, inspect, audit and/or reproduce any public documents, materials, or information necessary to facilitate this audit.

6. **INDEPENDENT ENTITY AND ACKNOWLEDGEMENT OF RESPONSIBILITIES**

- 6.1. **Independent Entities.** The Parties expressly acknowledge that City and County are independent entities and each assumes all the rights, obligations, and liabilities applicable to it as an independent entity. No employee of the City may be considered an employee, agent, or representative of the County or gain any rights against the County pursuant to the County's personnel policies. No employee of the County may be considered an employee, agent, or representative of the City or gain any rights against the City pursuant to the City's personnel policies. The relationship of County and City under this Agreement is not and shall not be interpreted to be a partnership, joint enterprise or joint venture. Neither Party has the authority to:
 - a. make any statements, representations or commitments of any kind on behalf of the other Party, or

- b. take any action which would be binding on the other Party, or
- c. hold itself out to be able to bind the other Party.

6.2. Responsibilities. City is not liable for any claims, damages or attorney fees arising from any negligence or unlawful acts of the County or its employees in relation to this Agreement. County is not liable for any claims, damages or attorney fees arising from any negligence or unlawful acts of City or its employees in relation to this Agreement. City and County acknowledge that each entity is otherwise responsible for any claims or losses from personal injury or death or property damages that were caused by the acts or omissions of that entity, its agents, employees, or representatives in the performance of the services and activities under this Agreement; and that each entity is responsible for the handling of the portion of any claim which is based solely on the assertion that a policy of that entity is illegal or unenforceable in any way. Neither the City nor the Third Party Reviewer is liable for the release of any information provided by the County or any Company to review compliance with the County's Chapter 381 Agreement with any Company.

6.3. Claims Notification. If any Claim is made or brought by any Person against City or County, the Party against whom the Claim is made shall give written notice to the other Party of the Claim within three Working Days after being notified of it or the threat of it. This notice shall include the name and address of the Person that made or threatened to make or institute a Claim; the basis of the Claim; the court or administrative tribunal, if any, where the Claim was instituted; and the name or names of any Person against whom this Claim is being made or threatened. This written notice shall be given in the manner provided in Section 11.0 of this Agreement. Except as otherwise directed, the Party against whom the Claim has been made shall furnish the other Party with copies of all pertinent papers received by that Party with respect to these Claims.

7. TERMINATION

7.1. Termination for Cause. Unless otherwise specified in this Agreement, either Party has the right to terminate this Agreement, in whole or in part, at any time for the following reasons:

- a. During the budget planning and adoption process, their governing body fails to provide funding for the Agreement or its Third Party Reviewers during the next Agreement Term;
- b. The other Party has failed to comply with any term or condition of this Agreement.
- c. The other Party is unable to conform to changes required by federal, state or local laws or regulations.

7.2. Mutual Termination. Both Parties have the right to terminate this Agreement, in whole or in part, when both Parties agree that the continuation of the activities funded under this Agreement would not produce beneficial results commensurate with the further expenditure of funds; provided that both Parties agree, in writing,

upon the termination conditions, including the effective date of the termination and, in the case of partial termination, the portion of the Agreement to be terminated.

- 7.3. **Termination.** The Agreement may be terminated by either Party at any time, for any reason, by giving 30 days' written notice to the other Party of its intention to terminate.
- 7.4. **Termination Procedure.** At least 30 days prior to the effective date of termination, the Party seeking termination shall notify the other Party in writing of the reasons for termination, the effective date of termination, and, in the case of a partial termination, the portion of the Agreement to be terminated. The other Party may avoid termination if that Party corrects the cause(s) for termination to the satisfaction of the terminating Party prior to the effective date of termination. This notice includes the decision by either Party not to fund this Agreement.
- 7.5. **Rights Surviving Termination.** If either Party terminates this Agreement in whole or in part, City has the right to receive payment for all services provided before the date of termination and not previously paid. Neither Party is responsible to the other Party for expenses or costs incurred after the effective date of the termination of this Agreement.
- 7.6. Nothing in this section 7 prevents or prohibits either Party from seeking any other remedy allowed by law.

8. MISCELLANEOUS PROVISIONS

- 8.1. **Compliance with Applicable Law.** City and County shall each provide, or the City shall contract to provide, all services and activities under this Agreement in compliance with the Constitutions of the United States and Texas and with all applicable federal, state and local orders, ordinances, laws, regulations, rules, policies and certifications governing any activities undertaken during the performance of this Agreement.
- 8.2. **Non-Waiver.** No payment, act or omission by either Party constitutes a waiver of any breach or default of the other Party which then exists or may subsequently exist. The failure of either Party to exercise any right or privilege granted in this Agreement shall not be construed as a waiver of that right or privilege.
- 8.3. **Reservation of Rights and Remedies.** All rights of the Parties under this Agreement are specifically reserved and any payment, act or omission shall not impair or prejudice any remedy or right to either Party under it. Exercise of any right or remedy in this Agreement shall not preclude the exercise of any other right or remedy under this Agreement or under any law, and any action taken in the exercise of any right or remedy shall not be deemed a waiver of any other rights or remedies.
- 8.4. **Law and Venue.** This Agreement is governed by the laws of the State of Texas and all obligations under this Agreement shall be performable in Travis County, Texas. Venue for any dispute arising out of this Agreement will lie in the appropriate courts of Travis County, Texas.

8.5. Severability. If any portion of this Agreement is ruled invalid by a court of competent jurisdiction, the remainder of it shall remain valid and binding, and shall continue to have full force and effect and shall not be impaired or invalidated in any way by that holding.

8.6. Interpretational Guidelines

- a. **Computation of Time.** When any period of time is stated in this Agreement, the time shall be computed to exclude the first day and include the last day of the period, provided the last day of the period is a Working Day. If the last day of any period falls on a day that is not a Working Day, these days shall be omitted from the computation.
- b. **Number and Gender.** Words of any gender in this Agreement shall be construed to include any other gender and words in either number shall be construed to include the other unless the context in the Agreement clearly requires otherwise.
- c. **Headings.** The headings at the beginning of the various provisions of this Agreement have been included only to make it easier to locate the subject matter covered by that section or subsection and are not to be used in construing this Agreement.

8.7. Immunity or Defense. Both parties expressly acknowledge that the execution of this Agreement and any conduct of any representative of City or County relating to this Agreement shall not waive, or be deemed to waive, any immunity or defense otherwise available to that Party against claims arising in the exercise of its governmental powers and functions, and shall not be considered a waiver of sovereign immunity to suit. Both Parties acknowledge that a decision by one Party to waive immunity or to compensate a claim for which immunity would have been a defense and would have operated to prevent payment does not operate as a waiver or decision to compensate by the other Party and such action by one Party shall not operate to incur any expense or charge to the other Party.

8.8. Survival of Conditions. The conditions and requirements of this Agreement which, by their terms, are performable after termination or expiration shall remain fully performable.

9. AMENDMENTS

9.1. Written Amendments. Any change to the terms of this Agreement or any attachments to it must be made in writing and signed by both Parties.

9.2. Acknowledgements as to Amendment. The Parties acknowledge that no officer, agent, employee or representative of theirs has any authority to change the terms of this Agreement unless expressly granted that specific authority by the governing entity of that Party under a specific provision of this Agreement or by separate action of that governing entity.

9.3. Submission of Amendment. Each Party shall submit all requests for alterations, additions or deletions to this Agreement or any attachment to it to the contact

person in Section 4.3 for consideration. Each Party shall submit these requests for changes for written approval by the governing entity or authorized representative.

10. NOTICES

10.1. Any notice required or permitted to be given under this Agreement by one Party to the other shall be in writing and shall be deemed to have been given:

- a. immediately if delivered in person to the person named in this Section 10 for the Party to whom the notice is directed, or
- b. on the third day following mailing if placed in the United States Mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the Party at the address in this section 10.

10.2. County Address. The address of County for all purposes under this Agreement shall be:

Bonnie Floyd, Purchasing Agent (or her successor)
P. O. Box 1748
Austin, Texas 78767

With copies to (registered or certified mail with return receipt is not required):

Diana Ramirez, Director, Economic Development & Strategic Investments (or her successor)
Planning and Budget Office
P. O. Box 1748
Austin, Texas 78767

10.3. City Address. The address of the City for all purposes under this Agreement and for all notices hereunder shall be as follows:

Elaine Hart, Interim City Manager (or her successor in office)
City of Austin
P. O. Box 1088
Austin, Texas 78767

With copy to (registered or certified mail with return receipt requested is not required)

Terry Franz, Economic Development Department
City of Austin
P. O. Box 1088
Austin, Texas 78767

and

Anne Morgan, City Attorney (or her successor in office)
City of Austin
P. O. Box 1088
Austin, Texas 78767

- 10.4. Change of Address.** Each Party may change the address for notice to it by giving written notice of the change in compliance with this Section 10.

11. LEGAL AUTHORITY

- 11.1. Legal Authority to Enter Agreement.** Each Party represents that it has the legal authority to enter into this Agreement. City represents that it has the legal authority to receive funds authorized by this Agreement and to perform the services it has obligated itself to perform under this Agreement.

- 11.2. Signers.** The person or persons signing this Agreement on behalf of each Party, or representing themselves as signing this Agreement on behalf of either Party, represent that he or she has been duly authorized by that Party to sign this Agreement on behalf of the Party and to bind the Party validly and legally to all terms, performances, and provisions in this Agreement.

12. PROHIBITIONS

- 12.1. Conflict of Interest.** In performing duties under this Agreement, City employees shall comply with the conflict of interest requirements and ethics provisions set forth in the Austin City Code, Article 4 (a copy of which has been provided to County). Both Parties shall comply with the conflict of interest provisions in Chapter 171 of the Texas Local Government Code and other applicable laws.

12.2. Gratuities.

- a. Either Party may terminate this Agreement if gratuities of any kind, including entertainment and gifts, were offered or given by the other Party or their representative to any of its officials or employees to secure favorable treatment under this Agreement.
- b. If this Agreement is terminated pursuant to this subsection, in addition to other rights and remedies, the Party seeking termination is entitled to recover liquidated damages from the other Party equal to the cost incurred by the other Party in providing these gratuities. Neither Party's employees, officers and agents shall solicit nor accept gratuities, favors or anything of monetary value from Third Party Reviewers or potential Third Party Reviewers.

13. ASSIGNABILITY

- 13.1.** No Party may assign any of the rights or duties under this Agreement without the prior written approval of the other Party. City acknowledges that no officer, agency, employee or representative of County has any authority to grant an assignment unless expressly granted that specific authority by the Commissioners Court.

14. FORCE MAJEURE.

14.1. Neither Party shall be financially liable to the other Party for delays or failures to perform under the Agreement where these are caused by force majeure (i.e. those causes generally recognized under Texas law as constituting impossible conditions). These delays or failures to perform extend the period of performance for a period of time equal to that required to remove these exigencies. If a Party seeking to avail itself of this clause does not notify the other Party within five Working Days after the impossible conditions have abated, that Party waives this right as a defense, unless timely notification is impractical under the circumstances and then notification must be done as timely as possible. Each Party agrees that breach of this provision by failure to provide notice or provide services after the impossible conditions have passed, entitles non-breaching Party to reduce or stop payments or services or immediately terminate this Agreement.

15. DUPLICATE ORIGINALS

This Agreement is executed in duplicate originals.

TRAVIS COUNTY

By: 
Sarah Eckhardt, County Judge

Date: JUN 20 2017

APPROVALS:

Approved as to Form: 
Barbara Wilson, Assistant County Attorney

Date: June 19, 2017

Approved by: 
Bonnie Floyd, Public Assistant

Date: 6-19-17

Funds Verified by: 
Nicki Riley, County Auditor

Date: 6/19/17

CITY OF AUSTIN

Nicki Riley, County Auditor

By: 
Elaine Hart, Interim City Manager

Date: 6/27/17

Approved as to Form: 
Leela Fireside, Assistant City Attorney

Date: 6/27/2017

**Exhibit A
Request for Payment**

Independent Third-Party Review Interlocal Agreement between City of Austin and Travis County

Date: _____ **County Contract Number:** _____

This Request for Payment is submitted in accordance with the terms and conditions of the Interlocal Agreement between the City of Austin (City) and Travis County (County) for Independent Third-Party Review. City certifies that it has paid in full each of the attached invoices.

Name of Third Party Reviewer: _____

<i>Invoice Number</i>	<i>Invoice Date</i>	<i>Month in which work was performed</i>	<i>Name of Joint Project</i>	<i>Total Amount billed</i>	<i>Amount due from County</i>

Certified by City of Austin Economic Development Department: _____
signature

Name: _____ **Title:** _____ **Date:** _____



Amendment No. 3
to
Contract No. PA170000026
for
Chapter 380 3rd Party Review Services
between
RSM US, LLP
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be March 7, 2018 through March 6, 2019. Three options will remain.
- 2.0 The total contract amount is increased by \$70,000.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 03/07/2017 – 03/06/2018	\$70,000.00	\$70,000.00
Amendment No. 1: Change of Scope of Work 09/20/2017	\$0.00	\$70,000.00
Amendment No. 2: Correction Note: Contract amount revised to reflect RCA 02/2/17, #35	\$0.00	\$70,000.00
Amendment No. 3: Option 1 – Extension 03/07/2018 – 03/06/2019	\$70,000.00	\$140,000.00

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date: Mike O'Brien 12/14/2017

Printed Name: Michael W. O'Brien
Authorized Representative Partner

RSM US, LLP
811 Barton Springs Road, 5th Floor
Austin, Texas 78704
(512) 476-0717

Sign/Date: Linell Goodin-Brown 2-16-18

Linell Goodin-Brown
Contract Management Supervisor II

City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701



Amendment No. 2
to
Contract No. PA170000026
for
Chapter 380 3rd Party Review Services
between
RMS US, LLP
and the
City of Austin

- 1.0 The Total Contract Amount displayed under "Initial Term" is incorrect. Amount corrected to reflect amount authorized by Austin City Council in RCA #35 on February 2, 2017. RCA calls for an estimated amount of \$70,000, with four 12-month extension options in an estimated amount of \$70,000 per extension option, for a total contract amount not to exceed \$350,000."

Action	Action Amount	Total Contract Amount
Initial Term: 03/07/2017 – 03/06/2018	\$70,000.00	\$70,000.00
Amendment No. 1: Change of Scope of Work 09/20/2017	\$0.00	\$70,000.00
Amendment No. 2: Correction Total Contract Amount revised to reflect RCA 02/2/17, #35	\$0.00	\$70,000.00

- 2.0 MBE/WBE goals do not apply to this contract.
- 3.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 4.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date: Mike O'Brien 9/24/17

Printed Name: Michael W. O'Brien
Authorized Representative

RSM US, LLP
811 Barton Springs Road, 5th Floor
Austin, Texas 78704
(512) 476-0717

Sign/Date: Liz Lock 9/26/17

Liz Lock
Procurement Specialist II
City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701



Amendment No. 1
to
Contract No. PA170000026
for
Chapter 380 3rd Party Review Services
between
RMS US, LLP
and the
City of Austin

- 1.0 The City hereby amends the above-mentioned subject contract to amend the following to Section 2.0 of the Scope of Work.

2.3 City Economic Development Partnership with Travis County. Under an interlocal agreement between the City and Travis County, the City and the Contractor will perform agreed-upon-procedures to verify compliance with certain requirements under Chapter 381 agreements with Companies having concurrent Chapter 380 and Chapter 381 agreements with the City and County respectively. Regardless of whether the Company has a concurrent Chapter 381 agreement with Travis County, the City will be the "engaging party" and the "responsible party" for each agreed-upon-procedures engagement. This means that the City will engage the work and is responsible for the procedures and the subject matter of the procedures. In cases where the Company has a concurrent Chapter 381 agreement with Travis County, Travis County will be a "specified user" of the agreed-upon-procedures report and the Contractor will confirm with the County that the County desires to be a specified user and that they are in agreement with the procedures in the arrangement letter between the City and the Contractor.

2.3.1 The Contractor is required to comply with all laws and terms of the interlocal agreement between the City and Travis County. The Contractor will receive no duplicate payments from other sources or under other contracts for services provided under the interlocal agreement between the City and Travis County. The City is solely responsible for payment of the Contractor.

Action	Action Amount	Total Contract Amount
Initial Term: 03/07/2017 – 03/06/2018	\$350,000.00	\$350,000.00
Amendment No. 1: Change to Scope of Work 09/20/2017	\$0.00	\$350,000.00

- 2.0 MBE/WBE goals do not apply to this contract.
- 3.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 4.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date: Mike O'Brien 9/21/17

Printed Name: Michael W. O'Brien
Authorized Representative

RSM US, LLP
811 Barton Springs Road, 5th Floor
Austin, Texas 78704
(512) 476-0717

Sign/Date: Liz Lock 9/21/17

Liz Lock
Procurement Specialist II
City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
RSM US, LLP
For
Compliance Review Services for Chapter 380 Incentive Agreements
MA 5500 PA170000026**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and RSM US, LLP ("Contractor"), having offices at 811 Barton Springs, Suite 550, Austin, TX 78704.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

1.1 **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.

1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.

1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Michael O'Brien, Phone: (512) 476-0717, Email Address: mike.obrien@rsmus.com. The City's Contract Manager for the engagement shall be Terry Franz, Phone: (512) 974-7871, Email Address: terry.franz@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK

2.1 **Contractor's Obligations.** The Contractor shall fully and timely provide all deliverables described herein and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

2.2 **Tasks.** In order to accomplish the work described herein, the Contractor shall perform the tasks specified in the following document:

2.2.1 RSM US, LLP, Scope of Services dated September 20, 2016

SECTION 3. COMPENSATION

3.1 **Contract Amount.** The Contractor will be paid as indicated herein upon the successful completion of the Scope of Work. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not-to-exceed \$350,000 for all fees and expenses.

3.2 **Invoices.**

3.2.1 **Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be

returned to the Contractor. Invoices shall be emailed to terry.franz@austintexas.gov or delivered to the below address:

	City of Austin
Department	Economic Development Department
Attn:	Terry Franz
Address	301 W. 2 nd Street, 2 nd Floor
City, State, Zip Code	Austin, TX 78701

3.2.2 Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.

3.2.3 Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

3.3 **Payment.**

3.3.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

3.3.2 If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.

3.3.3 The City may withhold or off set the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:

3.3.3.1 delivery of defective or non-conforming deliverables by the Contractor;

3.3.3.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

3.3.3.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;

3.3.3.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;

3.3.3.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

3.3.3.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or

3.3.3.7 failure of the Contractor to comply with any material provision of the Contract Documents.

3.3.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

3.3.5 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.

3.4 **Non-Appropriation.** The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this Contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation

to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

3.5 Final Payment and Close-Out.

3.5.1 The making and acceptance of final payment will constitute:

3.5.1.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

3.5.1.2 a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled. The waiver shall solely apply to additional fee requests after final payment for the services provided under the terms of this Agreement.

SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** The Contract shall be in effect for an initial term of 12 months and may be extended thereafter for up to four additional 12 month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee.

4.1.1 Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 calendar days unless mutually agreed on in writing).

4.2 **Right To Assurance.** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

4.3 **Default.** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

4.4 **Termination For Cause.** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

4.5 **Termination Without Cause.** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

4.6 **Fraud.** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

SECTION 5. OTHER DELIVERABLES

5.1 **Insurance:** The following insurance requirements apply.

5.1.1 **General Requirements.**

5.1.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Contract and during any warranty period.

5.1.1.2 The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to Contract execution and within fourteen (14) calendar days after written request from the City.

5.1.1.3 The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.

5.1.1.4 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

5.1.1.5 The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

5.1.1.6 The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.

5.1.1.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall be mailed to the following address:

City of Austin
Purchasing Office
P. O. Box 1088
Austin, Texas 78767

5.1.1.8 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

5.1.1.9 If insurance policies are not written for amounts specified in Paragraph 5.1.2, Specific Coverage Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

5.1.1.10 The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

5.1.1.11 The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

5.1.1.12 The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

5.1.1.13 The Contractor shall endeavor to provide the City thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

5.1.2 **Specific Coverage Requirements.** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

5.1.2.1 **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

5.1.2.1.1 Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.

5.1.2.1.2 Contractor/Subcontracted Work.

5.1.2.1.3 Products/Completed Operations Liability for the duration of the warranty period.

5.1.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.

5.1.2.1.5 Thirty (30) calendar days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.

5.1.2.1.6 The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

5.1.2.2 **Business Automobile Liability Insurance.** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements:

5.1.2.2.1 Waiver of Subrogation, Endorsement CA0444, or equivalent coverage.

5.1.2.2.2 Thirty (30) calendar days Notice of Cancellation, Endorsement CA0244, or equivalent coverage.

5.1.2.2.3 The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

5.1.2.3 **Worker's Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

5.1.2.3.1 The Contractor's policy shall apply to the State of Texas.

5.1.2.3.2 Waiver of Subrogation, Form WC420304, or equivalent coverage.

5.1.2.3.3 Thirty (30) calendar days Notice of Cancellation, Form WC420601, or equivalent coverage.

5.1.2.4 **Professional Liability Insurance.** The Contractor shall provide coverage, at a minimum limit of \$500,000 per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission arising out of the performance of professional services under this Agreement.

If coverage is written on a claims-made basis, the retroactive data shall be prior to or coincident with the date of the Contract and the certificate of insurance shall state that the coverage is claims-made and indicate the retroactive date. This coverage shall be continuous and will be provided for 24 months following the completion of the contract.

5.1.2.5 **Endorsements.** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

5.2 **Equal Opportunity.**

5.2.1 **Equal Employment Opportunity.** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

5.2.2 **Americans With Disabilities Act (ADA) Compliance.** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

5.3 **Interested Parties Disclosure.** As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the Offeror. Link to Texas Ethics Commission Form 1295 process and procedures below:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

5.4 **Acceptance of Incomplete or Non-Conforming Deliverables.** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

5.5 **Delays.**

5.4.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on

any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

5.5.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

5.6 **Ownership And Use Of Deliverables.** The City shall own all rights, titles, and interests throughout the world in and to the deliverables.

5.5.1 **Patents.** As to any patentable subject matter contained in the deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.

5.6.2 **Copyrights.** As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this paragraph shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.

5.6.3 **Additional Assignments.** The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligation to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this paragraph shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms herein.

5.7 **Rights to Proposal and Contractual Material.** All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.

5.8 **Publications.** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

SECTION 6. WARRANTIES

6.1 **Warranty – Price.**

6.1.1 The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

6.1.2 The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

6.1.3 In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

6.2 **Warranty – Services.** The Contractor warrants and represents that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

6.2.1 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

6.2.2 Unless otherwise specified in the Contract, the warranty period shall be at least one year from the acceptance date. If during the warranty period, one or more of the warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

6.2.3 If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

SECTION 7. MISCELLANEOUS

7.1 **Place and Condition of Work.** The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the Contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

7.2 Workforce.

7.2.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

7.2.2 The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:

7.2.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Contract; and

7.2.2.2 use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

7.2.3 If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent, subject to the constraints of industry professional standards.

7.3 **Compliance with Health, Safety, and Environmental Regulations.** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

7.4 **Significant Event.** The Contractor shall immediately notify the City's Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to the Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

7.4.1 disposal of major assets;

7.4.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;

7.4.3 any significant termination or addition of provider contracts;

7.4.4 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;

7.4.5 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this Contract;

7.4.6 reorganization, reduction and/or relocation in key personnel;

7.4.7 known or anticipated sale, merger, or acquisition;

7.4.8 known, planned or anticipated stock sales;

7.4.9 any litigation against the Contractor; or

7.4.10 significant change in market share or product focus.

7.5 **Audits and Records.**

7.5.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit or examine any and all records of the Contractor related to the performance under this Contract. City may reproduce the aforementioned records when compelled by a court of law or due to required discovery for litigation. Contractor does not waive any rights to file documents in connection with a litigation in order to prevent disclosure. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

7.5.2 Records Retention:

7.5.2.1 For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the contract.

7.5.2.2 All Records are the property of the City. Notwithstanding, it is understood that at all times Contractor's workpapers, as defined by industry standards, shall remain the sole property of Contractor and are not subject to the terms of this section. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when:

7.5.2.2.1 requested by a director or an authorized City employee; or

7.5.2.2.2 the contract is completed or terminated.

7.5.3 The Contractor shall include sections A and B above in all subcontractor agreements entered into in connection with this Contract.

7.6 **Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

7.7 **Indemnity.**

7.7.1 Definitions:

7.7.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

7.7.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;

7.7.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

7.7.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

7.7.2 **THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

7.8 **Claims.** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

7.9 **Notices.** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:

City of Austin, Purchasing Office

ATTN: John Hilbun, Contract Administrator

P O Box 1088

Austin, TX 78767

To the Contractor:

RSM US, LLP

ATTN: Michael O'Brien

811 Barton Springs, Suite 550

Austin, TX 78704

7.10 **Confidentiality.** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information. Notwithstanding, it is understood that Contractor subscribes to a program of peer review for maintenance of quality control as required by its profession. As part of this program, engagement files may be selected for review by other professionals under strict rules of confidentiality and non-disclosure agreement. Acceptance constitutes agreement for disclosure under peer review programs, subject to Contractor obtaining the written consent of the company for which the engagement files pertain to. Contractor shall provide reasonable advanced written notice to the City of the selection of an engagement file which is the subject of this Agreement and provide confirmation of the company's consent to release of the information.

7.11 **Advertising.** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

7.12 **No Contingent Fees.** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

7.13 **Gratuities.** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

7.14 **Prohibition Against Personal Interest in Contracts.** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the

performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

7.15 **Independent Contractor.** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

7.16 **Assignment-Delegation.** The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

7.17 **Waiver.** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

7.18 **Modifications.** The Contract can be modified or amended only in writing signed by both parties. No pre-printed or similar terms on any Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

7.19 **Interpretation.** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

7.20 **Dispute Resolution.**

7.20.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

7.20.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

7.21 **Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program.**

7.21.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.

7.21.2 The City of Austin has determined that no goals are appropriate for this Contract. **Even though no goals have been established for this Contract, the Contractor is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.**

7.21.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

7.22 **Subcontractors.**

7.22.1 If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan, the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

7.22.2 Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:

7.22.2.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract.

7.22.2.2 prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

7.22.2.3 require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

7.22.2.4 require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

7.22.2.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

7.22.3 The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

7.22.4 The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

7.23 **Jurisdiction And Venue.** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

7.24 **Invalidity.** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

7.25 **Holidays.** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

7.26 **Survivability of Obligations.** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

7.27 **Non-Suspension or Debarment Certification.** The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

7.28 **Incorporation of Documents.** Section 0100, Standard Purchase Definitions, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address:
https://assets.austintexas.gov/purchase/downloads/standard_purchase_definitions.pdf

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

RSM US, LLP

By: Mike O'Brien
Signature

Name: Michael W. O'Brien
Printed Name

Title: Partner

Date: 3/7/2017

CITY OF AUSTIN

By: [Signature]
Signature

Name: JOHN HILBUN
Printed Name

Title: CONTRACT ADMINISTRATOR

Date: 03/07/17

List of Exhibits

Exhibit A	RSM US, LLP, Scope of Services dated September 20, 2016
Exhibit B	Non Discrimination Certification, Section 0800
Exhibit C	Non-Suspension or Debarment Certification
Exhibit D	RSM US, LLP, Statement of Qualifications dated September 14, 2016

EXHIBIT B
City of Austin, Texas
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE
NON-DISCRIMINATION CERTIFICATION

City of Austin, Texas
Human Rights Commission

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

Sec. 4-2 Discriminatory Employment Practices Prohibited. As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B) (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below.

City of Austin
Minimum Standard Non-Discrimination in Employment Policy:

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payments, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 7th day of March, 2017

CONTRACTOR

Authorized
Signature

Title

RSM US LLP
Mark O'Brien
Partner

Agreed Upon Procedures Engagements Regarding Economic Development Agreements Scope of Work-Section 0500

Purpose

The purpose of this professional services agreement is to provide verification of the results of performing procedures developed by the City in order to determine compliance with the terms and requirements in economic development incentive agreements and agreements related to participation in the Texas Major Events Reimbursement Program and/or the Texas Events Trust Fund. In accordance with Resolution 20071206-049 and Ordinance 20090312-005, the City Council is committed to making the administration of City of Austin economic development agreements a transparent process, and requires that compliance reviews for economic development agreements be verified by an independent third party ("Contractor") and the results of that independent review be made available for public inspection.

Qualifications

Each agreed-upon procedures engagement will consist of the City specifying procedures to be performed and the Contractor performing such procedures in accordance with attestation standards established by the American Institute of Certified Public Accountants. Each procedure specified by the City will reveal whether the party to an economic development agreement with the City (Company) complied with the selected requirement in their agreement.

Schedule and Term

The City of Austin currently has Chapter 380 agreements with eight Companies. Most of these agreements have ten year terms, but some have twenty year terms. Companies must meet performance requirements during each year of the term in order to be eligible for a Chapter 380 payment for that year. The number of agreed upon procedures engagements to be conducted each year is expected to remain relatively stable at around ten reviews per year.

Reports of the Companies' performance during the previous year are typically due in March. The City and the Contractor then determine whether each Company has complied with the terms of their agreement. Provided a Company is found to be compliant, that Company's Chapter 380 payment is processed in October.

To the extent that Companies are prompt in providing reports to the City, scheduling meetings and providing information needed to perform the procedures needed by the City to verify compliance, the City and the Contractor shall make every effort to complete third party agreed upon procedures so that Chapter 380 payments may be made timely, usually by October 31.

Method

Since much of the material that the City and the Contractor evaluate in order to determine each Company's compliance is considered proprietary by the Companies, agreed upon procedures are conducted at the Companies' sites. In order to minimize disruption to the Companies, the City and the Contractor conduct the on-site portions of each agreed upon procedures engagement concurrently. Each third party agreed upon procedures engagement is specific to the agreement which identifies the obligations of the Company and the City.

Once the City receives a Company's Certificate of Compliance, in or around March, the City will evaluate the report, then coordinate with the Company and the Contractor to schedule a meeting at the Company's site. The City will provide to the Company and the Contractor a detailed agenda for the meeting, generally describing the procedures to be performed.

Each third party agreed upon procedures engagement will consist of the City and the Contractor performing the procedures, agreed upon by the City and the Contractor. The City will use the

Agreed Upon Procedures Engagements Regarding Economic Development Agreements Scope of Work-Section 0500

information resulting from the agreed upon procedures to determine whether the Company complied with each applicable requirement in their agreement with the City.

While much of the material that the City and the Contractor evaluate in order to determine compliance is considered proprietary by the Companies, the Contractor's reports include only general information and are made available to the public. Each report will be written in a way that clearly communicates each of the procedures performed and the outcome. No report will be finalized until it is accepted by the City.

After the end of each calendar month, the Contractor will invoice the City for the hours Contractor has worked during the previous month on each Company's agreed upon procedures engagement. Each invoice shall itemize the hours billed to each Company's project.

Cost

The actual cost of each agreed upon procedures engagement will depend on the agreed upon procedures required and the length of time needed to apply them. The cost anticipated for the initial 12-month contract period is estimated to be \$70,000, with four additional 12-month options at an estimated amount of \$70,000 per option, dependent upon available funding.

EXHIBIT C

City of Austin, Texas

NON-SUSPENSION OR DEBARMENT CERTIFICATION

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000.00 and all non-procurement transactions. This certification is required for all Vendors on all City of Austin Contracts to be awarded and all contract extensions with values equal to or in excess of \$25,000.00 or more and all non-procurement transactions.

The Contractor hereby certifies that its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.

Dated this 7th day of March, 2017

CONTRACTOR

Authorized
Signature

Title

RSM US LLP

Mike O'Brien

Partner

STATEMENT OF QUALIFICATIONS FOR CHAPTER 380 ORDINANCE THIRD PARTY REVIEW

CITY OF AUSTIN ECONOMIC
DEVELOPMENT DEPARTMENT

September 14, 2016



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RSM US LLP

811 Barton Springs Road
Fifth Floor
Austin, Texas 78701

T +1 512 476 0717

www.rsmus.com

Ms. Sylnovia Holt-Rabb, Assistant Director
City of Austin
Economic Development Department
301 West 2nd Street
Austin, Texas 78701

Dear Ms. Holt-Rabb:

RSM US LLP (RSM) is pleased to submit this statement of qualifications to provide independent third party agreed-upon procedures that the City of Austin can use to verify compliance with the terms and requirements in economic development incentive agreements and/or agreements related to participation in the Texas Major Events Reimbursement Program or the Texas Events Trust Fund for the City of Austin Economic Development Department ("COA EDD").

COA EDD needs to work with a respected national firm that you will not outgrow. You also deserve a professional services firm that is committed to serving you with its top people.

As the largest U.S. provider of audit, tax and consulting services focused on the middle market, RSM is honored to serve cities like the City of Austin – and we look forward to treating you as a valued client.

We are confident RSM is the right choice to deliver upon your expectations based on the following factors.

To facilitate your review, there are several key points we wish to emphasize regarding our qualifications:

1. Through our recently merged firm – Padgett, Stratemann & Co., we have over five years of experience with the COA EDD economic development incentive agreements and agreements related to participation in the Texas Major Events Reimbursement Program and the Texas Events Trust Fund.
2. We have a thorough understanding of and experience with the reporting requirements required by City Council Resolution 20071206-049 and Ordinance 20090312-005.
3. We understand the qualifications are for engagements to be performed in accordance with attestation standards established by the American Institute of Certified Public Accountants. Engagements and the procedures to be performed will be agreed upon by the COA EDD and RSM.

THE POWER OF BEING UNDERSTOOD
AUDIT | TAX | CONSULTING

Ms. Sylnovia Holt-Rabb, Assistant Director
City of Austin
Economic Development Department

September 14, 2016 – page 2

4. We understand the timeline for the completion of the attestation engagements and are committed to complying with the dates required by COA EDD. We have a strong commitment to client service and will provide the COA EDD with reliable professional services throughout the year.

We appreciate this opportunity to present our Statement of Qualifications to the COA EDD. We have the capability to perform all work required in a professional, complete and timely manner. We believe that we are the best qualified firm due to our experience with governmental entities involved in economic development agreements, and the expertise and independence of our team.

If any additional information is required, please contact Mike O'Brien, CPA at (512) 476-0717 or mike.obrien@rsmus.com.

Respectfully submitted,

RSM US LLP

A handwritten signature in dark ink, reading "Mike O'Brien". The signature is fluid and cursive, with the first name "Mike" and last name "O'Brien" clearly distinguishable.

Mike O'Brien, CPA
Partner

Firm Organization

Name and Address	RSM US LLP 811 Barton Springs Road, Fifth Floor Austin, Texas 78704 512-476-0717
Type of Business Entity	Limited Liability Partnership
State of Incorporation or Organization	Illinois
Location of Office Providing Service	811 Barton Springs Road, Fifth Floor Austin, Texas 78704
Principal Contact Person	Mike O'Brien, CPA 811 Barton Springs Road, Fifth Floor Austin, Texas 78704 Business Phone: (512) 476-0717 Business Fax: (512) 476-0462 Email Address: mike.obrien@rsmus.com
Federal Tax Payer ID #	██████████
Texas Franchise Taxpayer #	██████████
Texas State Board of Public Accountancy License #	P05638

Experience

Scope of Services

RSM is a full service CPA firm offering a comprehensive array of attestation, tax, accounting, and advisory services. RSM believes in delivering quality resources to our clients. We do this by, not only providing superior services, but also by maintaining industry-specific knowledge.

Our firm's audit services area contains industry-specific niches in order to promote high quality services. The industry specific niches are:

- Public Sector (Government and Not-for-Profit Organizations)
- Manufacturing, Retail & Distribution
- Construction
- Health Sciences
- Financial Services
- Technology
- Real Estate
- Private Client Services
- Energy

Team members on each industry-specific niche are representative of various departments within RSM. Our goal is to keep abreast of each unique industry so that the unique needs of our clients' industries are considered in each of our services.

Attestation Services

Independent Audit Services

The performance of independent audits of financial statements is the largest practice segment within the firm. Our audit department is organized into three main areas of expertise, which allow us to develop and maintain the expertise and critical mass needed to serve our varied client base. Our three functional audit areas are as follows:

- Governmental and not-for-profit organizations, including single audits
- Private sector and regulated industries
- SEC – public company audits

Other Attestation Services

In addition to audit services, our firm offers other attestation services including, but not limited to those listed below:

- Review and compilation services under Statement of Standards for Accounting and Review Services (SSARS)
- Agreed upon procedure engagements
- Statement on Standards for Attestation Engagements (SSAE) No. 16 ("SOC-1")

Experience

Scope of Services – continued

Tax Services

Our tax department offers a broad spectrum of services covering all types of entities. We consult with and provide services to corporate, individual, partnership, estate, trust, and not-for-profit entities in the areas of payroll, sales, franchise, estate (including gift and generation-skipping transfer) and income taxation.

While our most common tax service involves assistance in tax compliance, i.e. tax return preparation, we encourage and are heavily involved in planning tax transactions so as to minimize or defer the related tax impact. By keeping current on new tax laws and legislation, we are in a position to identify and communicate key tax planning opportunities that may minimize both your current and future tax liabilities. We provide business and entity planning, especially in the areas of formation, operation, and dissolution. We have extensive experience in business acquisitions, including mergers and acquisitions and other related reorganizations. We can assist business owners and executives in planning compensation packages (including the implementation of qualified and nonqualified retirement programs), analyzing shareholder buy-sale agreements and succession planning for your closely held business.

If the need arises, we can provide audit representation during examination of returns before the Internal Revenue Service and other governmental agencies.

Accounting Solutions

Our firm offers a full scope of accounting and bookkeeping services. Accounting services offered by the firm include, but are not limited to those listed below:

- Complete client accounting and bookkeeping services
- Client write-up services
- On site accounting assistance and/or review of in-house accounting procedures

Advisory Services

Advisory services vary widely in size, complexity, and scope, as well as in technical subject matter. Our firm has substantial expertise and experience in a wide variety of advisory service engagements for our clients.

The focus of advisory services performed by the firm is to identify and define client needs, select and supervise appropriate staff, apply an analytical approach appropriate to the engagement, apply knowledge of the technical subject matter under consideration, communicate recommendations effectively, and when required, assist in implementing recommendations.

Through our qualifications in the advisory services area, we provide advice and technical assistance, which will enable client management to conduct its affairs more effectively. These qualifications include technical competence; familiarity with the client's finance and control systems and business problems; analytical ability and experience in problem-solving; and professional independence, objectivity, and integrity.

Experience

Scope of Services – continued

Advisory Services

Advisory services offered by the firm include, but are not limited to those listed below:

- Insurance receivership services
- Bankruptcy services
- Litigation support and expert testimony
- Internal control review and compliance
- Forensic and fraud accounting investigation
- Merger and acquisition analysis
- Cost accounting and profit analysis
- General business consulting

Background and Qualifications

Government organizations are striving for greater levels of transparency. It has become increasingly important to clearly articulate where resources are allocated. For organizations in this sector to thrive, clear and comprehensive financial reporting is critical.

RSM and its assurance team have served the government sector for decades with a host of financial and consulting services designed to ensure clarity in reporting. Due to the regulations and complexity of this sector, it is important to have a team with real-world experience.

Government Audit and Attestation Services Experience

- Local municipalities – cities and special purpose governments
 - Local Government Code Chapter 380 Agreed-Upon Procedures
 - Texas Major Events Reimbursement Program
 - Texas Events Trust Fund
- Independent school districts
- River authorities and water districts
- Utilities (power/electric and water) and cooperatives
- Federal and state agencies
- Public employee retirement systems

License to Practice in Texas

Our firm is licensed and in good standing, as a certified public accounting firm for public practice in Texas with the Texas State Board of Public Accountancy. The firm does not have a history of sub-standard practice and has never received a public or private reprimand from the Texas State Board of Public Accountancy or any other organization. The assigned key staff members, including partners and managers, are properly licensed to practice in the State of Texas.

Experience

Independence

None of the proposed engagement team members have any material direct or indirect financial interest in the COA EDD or any personal or financial relationships with any staff member in any position with the COA EDD.

Our audit team is not related, either by consanguinity or by affinity to any employees of the COA EDD.

Quality Control

We are members of the American Institute for Certified Public Accountants (AICPA), and as such we comply with the requirements set forth by the AICPA's Peer Review Program. In addition to the quality control review requirements set forth by the AICPA, we have an existing in-house quality control program that is based upon the AICPA standards for quality control for public accounting firms. We have met all quality review requirements and received an unqualified opinion on our peer review dated October 2, 2014. We are required to have these reviews every three years.

Professional Memberships

Our firm is a member, in good standing, with the following professional organizations:

American Institute of Certified Public Accountants (AICPA)

The AICPA is the leading national, professional organization for all Certified Public Accountants. Its mission is to provide members with the resources, information, and leadership that enable them to provide valuable services in the highest professional manner to benefit the public as well as employers and clients. In fulfilling its mission, the AICPA works with state CPA organizations and gives priority to those areas where public reliance on CPA skills is most significant.

AICPA Governmental Audit Quality Center

RSM is a voluntary member of the Governmental Audit Quality Center (the "Center") established by the AICPA. RSM's membership in the Center demonstrates the firm's commitment to audit quality in the critical area of governmental audits. RSM is committed to the governmental sector and the Center's strict membership requirements.

Public Company Accounting Oversight Board (PCAOB)

The PCAOB is a private sector, non-profit corporation created by the Sarbanes-Oxley Act of 2002, to oversee the auditors of public companies in order to protect the interests of investors and further the public interest in the preparation of informative, fair, and independent audit reports.

References

Similar Engagements with Other Governmental Entities

We provide services to many public and private entities. We believe our industry specialization, combined with our service philosophy, allows us to stay ahead of changes that may impact you, and we can discuss these potential developments with you. The following is a partial listing of similar clients of the size and scope of the services to be provided to COA EDD served by key members of your RSM team.

Entity	Contact Information	Partner	Service Type and Deliverable	Years of Service	Fee Method
Austin Bergstrom Landhost Enterprises, Inc.	Susana Carbajal 512.530.6364 3600 Presidential Blvd. Suite 411 Austin, Texas 78719	Mike O'Brien	Audit of Financial Statements and Net Revenue Coverage Compliance	2005-present	Quoted Fee by Engagement Letter
Austin Independent School District	Nicole Conley 512.414.9919 1111 West Sixth Street Suite A-370 Austin, Texas 78703	Mike O'Brien	Audit of Financial Statements and Federal Compliance Audit	2005-present	Quoted Fee by Engagement Letter
City of San Antonio	Melanie Seale 210.207.8420 111 Soledad, 5th Floor San Antonio, Texas 78205	Santos Fraga and Mike O'Brien	Audit of Financial Statements and Federal Compliance Audit	2012-present	Fixed by Contract
San Antonio Water Systems	Mary Bailey 210.233.3799 2800 U.S. Hwy 281 N San Antonio, Texas 78212	Mike O'Brien	Audit of Financial Statements and Federal Compliance Audit	2005-present	Fixed by Contract
City of Austin Convention Center	Michele Gizelbach Chief Financial Manager 512.404.4054 500 E. Cesar Chavez Austin, Texas 78701	Mike O'Brien	Audit of Special Purpose Financial Statements - Levy Foodservice Contract	2013-present	Fixed by Contract
City of Austin Economic Development Department	Sylvia Holt-Rabb Financial Manager 512.974.3131 301 West 2nd Street Austin, Texas 78701	Mike O'Brien	Agreed-Upon Procedures for Economic Development Agreements	2011-present	Fixed by Contract

Personnel

Partner, Supervisory and Staff Qualifications and Experience

We have assembled your RSM team with an emphasis on technical and interpersonal skills that are a good fit for the COA EDD and its management team. The people selected to fill the roles are vital to a successful audit or agreed-upon procedures engagement. We have formed a team that contains the capabilities and experience we believe are indispensable for this engagement. This includes background in:

- A variety of state and local governments requiring full-scope financial audits
- Texas Economic development incentive agreements
- Texas Major Events Reimbursement Program agreed-upon procedures engagements
- GASB Standards relative to governmental financial reporting
- Austin City Council Resolution 20071206-049 and Ordinance 20090312-005
- Full-scope audits encompassing financial and compliance reporting for federal and state funding

Resumes for our proposed service team are included at Attachment A.

Other team members will be assigned based on the engagement needs during the period of fieldwork. All accountants assigned will be college graduates with a major in accounting and will be trained in governmental accounting and auditing.

We will notify the COA EDD of any changes in the partner, manager or other supervisory staff that leave the firm or are promoted to other positions.

Client Services Partner – Mike O’Brien, CPA

In order to properly coordinate the services of the firm, Mike will have overall responsibility for all services performed for the COA EDD, including during the proposal process. Mike will be available to members of the COA EDD for technical consultation and information on the status of the engagement, special services required, and general business matters. Mike has more than 37 years of experience overseeing a wide variety of agreed-upon procedures and compliance audit engagements for commercial, governmental, not-for-profit and regulated entities. His primary specialty is with state and local governments, nonprofit organizations, schools, public sector investing entities, and utilities. He provides financial statement reporting, accounting practices and procedures, as well as internal control structure design and implementation consulting.

Audit Manager – Gaby Cazares, CPA

Gaby will serve as manager on this engagement. As the manager, she will coordinate the activities of the professional team members assigned to the engagement, participate in planning and developing the overall engagement approach, and monitor all phases of the engagement to ensure timely completion. Gaby will also will direct the day-to-day performance and conduct of the services provided to the COA EDD. Gaby has more than 15 years of public accounting and industry experience serving primarily the public sector industry. Her experience includes servicing governments and municipalities, and not-for-profit organizations, including performing agreed-upon procedures engagements for the City of Austin.

Personnel

Continuing Professional Education

Our professional personnel are provided with current and relevant training, which is designed to keep them abreast of the ever-changing environment in which we practice. We conduct formal training programs covering current technical developments in the governmental and not-for-profit accounting and auditing fields. While professional standards require at least 40 hours of continuing professional education per year, our team members usually receive significantly more through a combination of local in-house training and outside programs offered by organizations, such as the Texas Society of Certified Public Accountants. In addition, all of the Public Sector team receives at least 24 hours every 2 years in continuing professional education ("CPE") meeting the "Yellow Book" requirements. Due to our expertise and large clientele, our audit team has received extensive training and work experience in governmental and not-for-profit accounting and federal compliance audits. On our audits, team members assigned are all auditing specialists, that is, performing audits is all they do, and should any questions regarding tax law arise, they will be addressed by qualified members of our tax team who also spend full time in their specialization.

Estimated Fees and Rates

We do not believe that fee estimates should be the primary barrier between the City of Austin Economic Development Department (“COA EDD”) and RSM being able to continue a long-term relationship. Accordingly, if our fee estimates do not match your expectations, we would welcome the opportunity to discuss them with you and enter into pre-contract negotiations.

Our fee for each agreed-upon procedures engagement will be determined by the time incurred by members of our audit team to provide the services and by their respective billing rates. Since each of the City’s Chapter 380 economic development agreements is unique to each company, the procedures and the time required will be different for each engagement. In general, and based on actual engagements performed in 2015 and 2016, we estimate our fees to provide the agreed-upon procedures services the COA EDD has requested would be in the range of \$4,500 to \$17,500 for each review. The foregoing is only an estimate. Actual fees would be determined by the number of hours spent to perform the procedures selected by the COA EDD. We would bill monthly for work performed by project based on actual time incurred at the hourly billing rates shown below.

The hourly rates for the agreed-upon procedures engagements and other consulting services or projects are as follows:

	2016	2017	2018
<u>Staff Classification</u>	<u>Rate Per Hour</u>	<u>Rate Per Hour</u>	<u>Rate Per Hour</u>
Partner	\$318	\$326	\$335
Audit Manager	\$228	\$239	\$245
Supervisory Associate	\$166	\$171	\$180
Supervising Senior Associate	\$150	\$155	\$163
Senior Associate	\$141	\$147	\$154
Staff Associate	\$120	\$126	\$132
Administrative Staff Associate	\$90	\$94	\$98

Rates per hour for 2019 and 2020 will be provided to the City for approval at the same time as each yearly contract extension is authorized.



Mike O'Brien, CPA
Partner
mike.obrien@rsmus.com

Mike has more than 37 years of experience overseeing a wide variety of financial and compliance audit engagements for commercial, governmental, nonprofit and regulated entities. Since 2007, Mike has served as the practice leader in the firm's public sector niche. His primary specialty is with state and local governments, nonprofit organizations, schools, public sector investing entities, and utilities. He provides financial statement reporting, accounting practices and procedures, as well as internal control structure design and implementation consulting.

Single audit experience includes: Capital Metropolitan Transportation Authority, Central Texas Regional Mobility Authority, State of Texas, Southwest Research Institute, Southwest Educational Development Lab, City of Austin, City of San Antonio, Austin Independent School District, Texas Guaranteed Student Loan Corp., Brazos River Authority, and San Antonio Water System.

Utility audit experience includes: City Public Service (CPS Energy), San Antonio Water System, Austin Energy, Guadalupe Valley Electric Cooperative, Kerrville Public Utility Board, Pedernales Electric Cooperative, Brownsville Public Utility Board, and Chisholm Trail Special Utility District.

Governmental audit experience includes: Capital Metropolitan Transportation Authority, Central Regional Mobility Authority, City of Austin, City of San Antonio, City of Buda, City of Kyle, Austin Independent School District, Dripping Springs Independent School District, Brazos River Authority, Guadalupe-Blanco River Authority, Texas Guaranteed Student Loan Corp., Texas Prepaid Higher Education Tuition Board, and Texas Treasury Safekeeping Trust Company.

Nonprofit experience includes: St. David's Foundation; Texas Association of School Boards, Southwest Educational Development Lab, and Life Support Counseling and Research, Inc.

Investing entity experience includes: Texas Local Government Investment Pool, Texas Local Government Investment Pool Prime, Texas Treasury Safekeeping Trust Company, Tobacco Settlement Permanent Trust Fund, Texas County and District Retirement System, Texas Municipal Retirement System, Texas Prepaid Higher Education Tuition Board, Lower Colorado River Authority Retirement Plan, and City of Austin Employees' Retirement System.

EXPERIENCE

- Financial and compliance auditing for state and local governments
- Financial and compliance auditing for nonprofit organizations
- Financial statement auditing and reporting for commercial entities
- Financial statement auditing and reporting for regulated entities and utilities
- Accounting practices and procedures consulting
- Internal control structure design and implementation consulting

AFFILIATIONS

- American Institute of Certified Public Accountants (AICPA)
- Texas Society of Certified Public Accountants (TSCPA)
- Austin Chapter of TSCPA
- Austin Area Boy Scout Troop 513 – Committee member (1999 – Present)
- Capitol Area Council of the Boy Scouts of America – former Board member (2001 – 2003)
- Texas State Board of Public Accountancy – former Technical Standards Committee member (1999 – 2000)
- Northwest Travis County Municipal Utility District No. 1 – former Board member (1986 – 1997)
-

EDUCATION AND CERTIFICATION

- BBA in Accounting – The University of Texas at Austin, Austin, Texas
- Certified Public Accountant

NOTEWORTHY ACCOMPLISHMENTS

- Capital Area Council Boy Scouts of America – Whitney M. Young Award Recipient (2005)
- Capital Area Council Boy Scouts of America – Silver Beaver Award Recipient (2008)
- Speaker at Texas Association of School Boards Annual Convention (2010-2012)
- Speaker at Texas Association of Appraisal Districts Convention (2012)

**Gaby Cazares, CPA***Manager*gaby.cazares@rsmus.com

Gabriela has more than 15 years' experience in financial and compliance auditing for state and local governments, student loan servicing, guarantor entities, and not-for-profit organizations. She has also been involved in financial statement reporting, review of accounting practices and procedures, and internal control structure design and implementation. In addition, Gabriela has experience in auditing private and publicly-registered entities in compliance with Sarbanes-Oxley. She has most recently concentrated on audits in accordance with OMB Circular A-133 (Single Audits).

EXPERIENCE

- Not-for-profit organizations
- Government entities
- SEC registrants
- Private entities

AFFILIATIONS

- American Institute of Certified Public Accountants (AICPA)
- Texas Society of Certified Public Accountants (TSCPA)
- Austin Chapter of Texas Society of Certified Public Accountants

EDUCATION AND CERTIFICATION

- BBA in Accounting – The University of Texas at Austin, Austin, Texas
- Certified Public Accountant



City of Austin FSD Purchasing Office

Certificate of Exemption

DATE: 09/19/2016

DEPT: Economic Development Department (EDD)

TO: Purchasing Officer or Designee

FROM: Terry Franz

BUYER: Claudia Rodriquez

PHONE: (512) 974-7871

Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals before entering into a contract requiring an expenditure of \$50,000 or more, unless the expenditure falls within an exemption listed in Section 252.022.

Senate Bill 7 amended Chapter 252 of the Local Government Code to exempt from the requirements of such Chapter expenditures made by a municipally owned electric utility for any purchases made by the municipally owned electric utility in accordance with procurement procedures adopted by a resolution of its governing body that sets out the public purpose to be achieved by those procedures. The Austin City Council has adopted Resolution No. 040610-02 to establish circumstances which could give rise to a finding of critical business need for Austin Energy.

This Certification of Exemption is executed and filed with the Purchasing Office as follows:

1. The undersigned is authorized to submit this certification.
2. The undersigned certifies that the following exemption is applicable to this purchase. (Please check which exemption you are certifying)

- ☐ a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality
- ☐ a procurement necessary to preserve or protect the public health or safety of municipality's residents
- ☐ a procurement necessary because of unforeseen damage to public machinery, equipment, or other property
- ☒ a procurement for personal, professional, or planning services
- ☐ a procurement for work that is performed and paid for by the day as the work progresses
- ☐ a purchase of land or right-of-way
- ☐ a procurement of items available from only one source, including: items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; gas, water, and other utility services; captive replacement parts or components for

- equipment; books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits
- ☐ a purchase of rare books, papers, and other library materials for a public library
- ☐ paving, drainage, street widening and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements
- ☐ a public improvement project, already in progress, authorized by voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes as authorized by the voters

- ☐ a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212
- ☐ personal property sold: at an auction by a state licensed auctioneer; at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or under an interlocal contract for cooperative purchasing administered by a regional planning commission established under Chapter 391
- ☐ services performed by blind or severely disabled persons
- ☐ goods purchased by a municipality for subsequent retail sale by the municipality
- ☐ electricity
- ☐ advertising, other than legal notices
- ☐ Critical Business Need (Austin Energy Only)

3. The following facts as detailed below support an exemption according to Section 252.022 of the Local Government Code for this purchase. Please verify the steps taken to confirm these facts. If you are citing the following exemptions, please provide the additional information requested below. A more detailed explanation of these exemptions is attached.

- **Preserve and Protect the Public Health and Safety** – Describe how this purchase will preserve and protect the public safety of residents.
- **Sole Source** – Describe what patents, copyrights, secret processes, or natural monopolies exist. Attach a letter from vendor supporting the sole source. The letter must be on company letterhead and be signed by an authorized person in company management.
- **Personal Services** – Describe those services to be performed personally by the individual contracted to perform them.
- **Professional Services** – Describe what mainly mental or intellectual rather than physical or manual and/or disciplines requiring special knowledge or attainment and a high order of learning, skill, and intelligence are required to perform this service.
- **Planning Services** – Describe the services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan, or regional land areas.
- **Critical Business Need** – Describe the procurement necessary to protect the competitive interests or position of Austin Energy.

This is a request to establish a contract for third party reviews of incentive agreements awarded by EDD. The services to be provided include inspecting payroll and accounting records that contain proprietary and/or sensitive information that cannot be retained by the City without being subject to public information laws. In accordance with Resolution 20071206-049 and Ordinance 20090312-005, the City Council is committed to making the administration of City economic development agreements a transparent process, and requires that compliance reviews for economic development agreements be verified by an independent third party and the results of that independent review be made available for public inspection. This is accomplished by the independent third party performing Agreed Upon Procedures in order to verify the City's findings.

4. Please attach any documentation that supports this exemption.
5. Please provide any evaluation conducted to support the recommendation. Include the efforts taken to ensure the selected vendor is responsible and will provide the best value to the City (Ex: evaluation of other firms, knowledge of market, etc).

The City has contracted with Padgett, Stratemann & Co., LLP (PS) since 2007 to conduct independent, third party reviews by performing Agreed Upon Procedures which demonstrate whether or not a party to an economic development incentive agreement has complied with the terms of its agreement with the City. Since the City began working with PS in 2007, the City and PS have developed efficiencies that minimize disruptions to the Companies under review, while ensuring that the agreed-upon procedures demonstrate whether or not each Company complied with the terms of their agreement. In August 2016 PS was acquired by RSM US LLP. The firm has valuable experience and knowledge regarding Austin's economic development program and agreements, as well as the reporting requirements of Resolution 20071206-049 and Ordinance 20090312-005.

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with RSM US LLP, Certified Public Accountant which will cost approximately \$ 350,000.00 (Provide estimate and/or breakdown of cost).

Recommended
Certification

Tony Fung
Originator

9/19/2016
Date

Approved
Certification

Simona Shekhar
Department Director or designee

9/19/16
Date

Don Edwards
Assistant City Manager / General Manager
or designee (if applicable)

9/22/16
Date

Purchasing Review
(if applicable)

Claudia Rodriguez
Buyer

9/30/16
Date

CR
Manager Initials

Exemption Authorized
(if applicable)

Samuel Ford
Purchasing Officer or designee

9/30/16
Date

02/26/2013

GOAL DETERMINATION REQUEST FORM

Buyer Name/Phone	Claudia Rodriguez x43092	PM Name/Phone	Terry Franz x47871
Sponsor/User Dept.	EDD	Sponsor Name/Phone	N/A
Solicitation No	N/A	Project Name	380 Chapter Agreement Reviews
Contract Amount	\$375,000	Ad Date (if applicable)	N/A
Procurement Type			
<input type="checkbox"/> AD – CSP <input type="checkbox"/> AD – Design Build Op Maint <input type="checkbox"/> IFB – IDIQ <input checked="" type="checkbox"/> Nonprofessional Services <input type="checkbox"/> Critical Business Need <input type="checkbox"/> Sole Source* <input type="checkbox"/> AD – CM@R <input type="checkbox"/> AD – JOC <input type="checkbox"/> PS – Project Specific <input type="checkbox"/> Commodities/Goods <input type="checkbox"/> Interlocal Agreement <input type="checkbox"/> AD – Design Build <input type="checkbox"/> IFB – Construction <input type="checkbox"/> PS – Rotation List <input type="checkbox"/> Cooperative Agreement <input type="checkbox"/> Ratification			
Provide Project Description**			
Services to provide compliance reviews of Chapter 380 Economic Development incentive agreements. The independent reviews are required to be completed by a third party per COA Resolution 20071206-049 and Ordinance 20090312-005 to approve payments to the Chapter 380 companies.			
Project History: Was a solicitation previously issued; if so were goals established? Were subcontractors/subconsultants utilized? Include prior Solicitation No.			
Pradgett and Stratemann, now RMS US, LLP has been providing these services to COA since 2007. Since the inception of the review process they have streamlined the reviews for cost efficiencies and to minimize disruption to the companies. The firm has valuable and extensive knowledge of the Economic Development program and agreements and the associated reporting requirements.			
List the scopes of work (commodity codes) for this project. (Attach commodity breakdown by percentage; eCAPRIS printout acceptable)			
94620-Auditing			
Claudia Rodriguez		10/12/2016	
Buyer Confirmation		Date	

* Sole Source must include Certificate of Exemption

**Project Description not required for Sole Source

FOR SMBR USE ONLY			
Date Received	11/04/2016 <i>SK</i>	Date Assigned to BDC	11/04/2016 <i>SK</i>
In accordance with Chapter 2-9(A-D)-19 of the Austin City Code, SMBR makes the following determination:			
<input type="checkbox"/> Goals	% MBE	% WBE	
<input type="checkbox"/> Subgoals	% African American	% Hispanic	
	% Asian/Native American	% WBE	

GOAL DETERMINATION REQUEST FORM

<input type="checkbox"/> Exempt from MBE/WBE Procurement Program	<input checked="" type="checkbox"/> No Goals
--	--

GOAL DETERMINATION REQUEST FORM

This determination is based upon the following:

- | | |
|---|--|
| <input type="checkbox"/> Insufficient availability of M/WBEs | <input type="checkbox"/> No availability of M/WBEs |
| <input checked="" type="checkbox"/> Insufficient subcontracting opportunities | <input type="checkbox"/> No subcontracting opportunities |
| <input type="checkbox"/> Sufficient availability of M/WBEs | <input type="checkbox"/> Sufficient subcontracting opportunities |
| <input type="checkbox"/> Sole Source | <input type="checkbox"/> Other |

If Other was selected, provide reasoning:

MBE/WBE/DBE Availability

Provide information on availability.

Subcontracting Opportunities Identified

List any subcontracting opportunities identified.

Counselor Name *Stella Richardson-Kinley for Jolene Cochran* 11/4/2016

SMBR Staff

Signature/ Date

SMBR Director or Designee

Date

Returned to/ Date:

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

RSM US LLP

Austin, TX United States

Certificate Number:
2017-175444

Date Filed:
03/07/2017

Date Acknowledged:

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Austin

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

MA 5500 PA170000026

Compliance Review Services for Chapter 380 Incentive Agreements

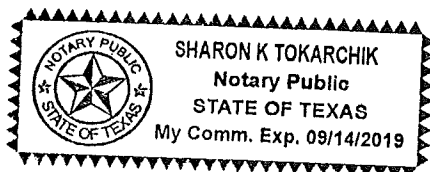
4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.



6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.



Michael W. O'Brien

Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said Mike O'Brien, this the 7 day of March, 20 17, to certify which, witness my hand and seal of office.

Sharon K. Tokarchik
Signature of officer administering oath

Sharon K Tokarchik
Printed name of officer administering oath

Notary
Title of officer administering oath